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Attorneys for Defendant Combined Management, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPLIED UNDERWRITERS, INC., a  
Nebraska Corporation, and APPLIED RISK  
SERVICES, INC., a Nebraska Corporation,

Plaintiffs,

vs.

COMBINED MANAGEMENT, INC., a  
Maine Corporation, and Does 1 Through 10,  
Inclusive,

Defendants.

CASE NO.

[Removed from Superior Court of  
California San Francisco County, Case No.  
CGC07466160]

NOTICE OF REMOVAL OF ACTION

[28 U.S.C. § 1441(b) and 1446(b)  
(Diversity)]

DEMAND FOR JURY TRIAL

ORIGINAL  
FILED

OCT - 5 2007

RICHARD W. WIEKING  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BZ

C 07 5129

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 Please take notice that Defendant, Combined Management, Inc., a Maine corporation,  
3 hereby removes this action from the Superior Court of California, County of San Francisco, to  
4 this Court, on the following grounds:

5 1. The Defendant, Combined Management, Inc., ("Defendant") has been named as  
6 a defendant in a civil action brought against it in the Superior Court of California, County of  
7 San Francisco, entitled Applied Underwriters, Inc., and Applied Risk Services, Inc. v.  
8 Combined Management, Inc., and Does 1 through 10, inclusive, Case Number CGC-07-466160.  
9 Combined Management, Inc. was served on September 7, 2007. This Notice of Removal is  
10 filed within 30 days after service on Combined Management, Inc. as required by 28 U.S.C. §  
11 1446(b). Attached hereto as Exhibit A are copies of the Summons, Complaint, and Civil Cover  
12 Sheet served on Plaintiff Combined Management, Inc. These documents, to the best of  
13 Plaintiff's knowledge, are the only papers and pleadings on file with the Superior Court in this  
14 action.

15 2. Defendant is informed and believes that Plaintiffs, Applied Underwriters, Inc.  
16 and Applied Risk Services, Inc., ("Plaintiffs") were, and still are, Nebraska corporations with  
17 their principle place of business in the State of Nebraska.

18 3. Defendant, Combined Management, Inc., was, and still is, a Maine corporation  
19 with its principle place of business in the State of Maine.

20 4. This action is a civil action over which this Court has original jurisdiction  
21 pursuant to 28 U.S.C. § 1332 and is one which may be removed to this Court by Defendant  
22 pursuant to the provisions of 28 U.S.C. § 1441(a) in that it is a civil action between citizens of  
23 different states and the matter in controversy exceeds the sum of \$75,000, inclusive of interest  
24 and costs. Plaintiffs allege in paragraph 6 of their Complaint that Defendant owes Plaintiffs  
25 \$278,901.48. Plaintiffs allege causes of action for breach of contract, breach of implied  
26 covenant of good faith and fair dealing, and unjust enrichment.


27 5. Defendant, Combined Management, Inc., a Maine corporation, may remove this  
28 entire action to this Court as a matter of right pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

1           6.       Written notice will be filed with the Clerk of the Superior Court of California,  
2 County of San Francisco, and with the adverse party as required by 28 U.S.C. § 1446(d).

3           WHEREFORE, Defendant Combined Management, Inc. prays that the above-captioned  
4 action be removed from the California Superior Court to this Court, and that this Court accept  
5 jurisdiction of this action and henceforth that this action be placed on the docket of this Court  
6 for further proceedings, the same as though this action had originally been instituted in this  
7 Court, and that no further or other proceedings shall be had with respect to the above-captioned  
8 case in the Superior Court of California.

9  
10 Dated: October 4, 2007

STEYER LOWENTHAL BOODROOKAS  
ALVAREZ & SMITH LLP


11  
12 By:   
13       Allan Steyer  
14       Jessica Grannis  
15       Attorneys for Combined Management, Inc.

16  
17 JURY DEMAND

18 Defendant Combined Management, Inc. hereby demands trial by jury.

19 Dated: October 4, 2007

20 STEYER LOWENTHAL BOODROOKAS  
21 ALVAREZ & SMITH LLP

22 By:   
23       Allan Steyer  
24       Jessica Grannis  
25       Attorneys for Combined Management, Inc.

**EXHIBIT A**

# SUMMONS

## (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):  
Combined Management, Inc.

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
Applied Underwriters, Inc., and Applied Risk Services, Inc.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

400 McAllister Street  
San Francisco, CA 94102

CASE NUMBER:  
(Número del Caso):

466160

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Michael K. Perkins (Bar # 172560)

Fine, Boggs & Perkins, LLP

2450 S. Cabrillo Highway, Suite 100, Half Moon Bay, CA 94019

Phone No. (650) 712-8908

Fax No. (650) 712-1712

DATE:

(Fecha)

AUG 17 2007

Clerk, by

GORDON PARK-LY (Secretario)

KAREN LIU

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Combined Management, Inc.

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Michael K. Perkins (State Bar # 172560)</b> <b>Fine, Boggs &amp; Perkins, LLP</b> <b>2450 S. Cabrillo Highway, Suite 100, Half Moon Bay, CA 94019</b> TELEPHONE NO.: (650) 712-8908 FAX NO.: (650) 712-1712 ATTORNEY FOR (Name): <b>Applied Underwriters, Inc. and Applied Risk Services, Inc.</b>		FOR COURT USE ONLY RECEIVED SUPERIOR COURT COUNTY OF SAN FRANCISCO PH 2:00 CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN FRANCISCO</b> STREET ADDRESS: <b>400 McAllister Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco 94102</b> BRANCH NAME:		
CASE NAME: <b>Applied Underwriters, Inc., et al. v. Combined Management, Inc.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER:  JUDGE:  DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) <b>Non-P/PI/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (18)	<b>Contract</b> <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **THREE (3)**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 13, 2007

Michael K. Perkins

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

## Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PIPD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PI/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PIPD/WD

## Non-PIP/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PIP/WD Tort (36)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller  
Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)  
Enforcement of Judgment  
Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

1 Michael K. Perkins, Esq (Bar No. 172560)  
2 FINE, BOGGS & PERKINS LLP  
2450 S. Cabrillo Hwy., Suite 100  
Half Moon Bay, California 94019  
3 Telephone: (650) 712-8908  
4 Facsimile: (650) 712-1712

5 Attorneys for Plaintiffs  
Applied Underwriters, Inc. and  
Applied Risk Services, Inc.

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 1 4 2007

GORDON PARK-LI, Clerk  
BY: CHRISTINA E. BAUTISTA  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JAN 25 2008 - 9 AM

DEPARTMENT 212

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 APPLIED UNDERWRITERS, INC.; and  
12 APPLIED RISK SERVICES, INC.,

13 Plaintiffs,

14 v.

15 COMBINED MANAGEMENT, INC.;  
and Does 1 through 10, Inclusive,

16 Defendants.

Case No.

07-466160

COMPLAINT

17  
18  
19 Plaintiffs allege as follows:

20 PRELIMINARY STATEMENT

21 1. Plaintiff Applied Underwriters, Inc. is a corporation licensed to do business in  
22 California. Plaintiff Applied Risk Services, Inc. is a corporation licensed to do business in  
23 California. (For purposes of this complaint, plaintiffs will be referred to collectively as  
24 "Applied"). At all times relevant to this complaint, plaintiffs were located in San Francisco  
25 County, California.

26 2. Defendant Combined Management, Inc. is a corporation which did business with  
27 Applied in San Francisco, California.  
28



1           3.     Venue is proper in San Francisco County, California because the contract at issue  
2     was entered into, and performed, in San Francisco, California.

3           4.     Plaintiffs are currently unaware of the names and capacities of Defendants DOES  
4     1 through 10, and will amend this complaint to state said Defendants names and capacities when  
5     such information becomes known.

6                                   **FACTUAL ALLEGATIONS**

7           5.     At defendant Combined Management's specific request and pursuant to a written  
8     agreement, Applied provided workers compensation insurance to defendant with a profit sharing  
9     component whereby defendant would participate in profit and losses generated by the workers'  
10    compensation policies provided to defendant. (A true and accurate copy of the pertinent portions  
11    of the parties' written contract is attached hereto and incorporated herein as Exhibit "A").  
12    Applied carried out all of its obligations under the contract.

13          6.     Pursuant to the terms of the parties' written contract, on January 23, 2006 Applied  
14    provided defendant with Profit Sharing Calculations reflecting a balance due and owing from  
15    defendant to Applied of \$278,901.48. (A true and accurate copy of the Profit Sharing Statement  
16    is attached hereto and incorporated herein as Exhibit "B"). Applied has made written demands  
17    for the \$278,901.48 from defendant, but defendant has failed and refused to pay the money owed  
18    to Applied according to the terms of the parties' contract.

19                                   **FIRST CAUSE OF ACTION**  
20                                   **Breach of Written Contract**

21          7.     Plaintiffs reallege and incorporate herein by reference all of the allegations of  
22    paragraphs 1 through 6 of this Complaint, as though set forth fully herein.

23          8.     Defendant's failure to comply with the terms of the written contract as set forth  
24    above was wrongful and was a material breach of the contract. Specifically, Defendant promised  
25    to pay to Applied any losses incurred through the profit sharing component in the parties' written  
26    agreement. Defendant failed and refused to comply with its promises.

27          9.     Plaintiffs have performed all obligations on their part under the parties' agreement.  
28    As a direct and proximate result of the foregoing breaches, Plaintiffs have been damaged in a sum

1 to be proven at trial, including but not limited to lost revenues, lost business opportunity, and lost  
2 interest on business opportunity, in a sum exceeding the jurisdiction of this court.

3 Wherefore, Plaintiffs pray for Judgment against Defendant as set forth in the Prayer for  
4 Relief.

5 **SECOND CAUSE OF ACTION**  
6 **Breach of Implied Covenant of Good Faith and Fair Dealing**

7 10. Plaintiffs reallege and incorporate herein by reference all of the allegations of  
8 paragraphs 1 through 9 of this Complaint, as though set forth fully herein

9 11. All contracts contain an implied covenant of good faith and fair dealing. As part  
10 of that implied covenant, Defendant agreed to deal with Applied in good faith, and to comply  
11 with the terms of the agreement which the parties negotiated.

12 12. Applied has performed all conditions, covenants and promises required to be  
13 performed in accordance with the terms and conditions of the parties' agreement.

14 13. Defendant has failed to perform all conditions, covenants and promises required  
15 of it in accordance with the agreement, as set forth above.

16 14. As a proximate and direct result of Defendant's wrongful conduct, Plaintiffs have  
17 been damaged in a sum to be proven at trial, including but not limited to lost revenues, lost  
18 business opportunity, and lost interest on business opportunity, in a sum exceeding the  
19 jurisdiction of this court.

20 Wherefore, Plaintiffs pray for Judgment against Defendant as set forth in the Prayer for  
21 Relief.

22 **THIRD CAUSE OF ACTION**  
23 **Unjust Enrichment**

24 15. Plaintiffs reallege and incorporate herein by reference all of the allegations of  
25 paragraphs 1 through 14 of this Complaint, as though set forth fully herein.

26 16. As a result of Defendant's breaches and misconduct as alleged herein, Defendant  
27 has been unjustly enriched. Said unjust enrichment was to the detriment of Plaintiffs.

28 17. Defendant should be forced to give up the benefits it unjustly received, which and  
said sum should be paid to Plaintiffs. This sum is at least \$278,901.48.

1 Wherefore, Plaintiffs pray for Judgment against Defendant as set forth in the Prayer for  
2 Relief.


3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs request judgment as follows:

- 5 1. For monetary damages according to proof, in an amount of at least \$278,901.48,  
6 in an exact amount to be proven at trial;
- 7 2. For interest at the legal rate, according to proof, including pre-judgment interest;
- 8 3. For an order disgorging Defendant of the money and other unjust enrichment  
9 resulting to Defendant;
- 10 4. For costs as allowed by law; and,
- 11 5. For all further relief the court deems just and proper.

12  
13 Dated: August 10, 2007

Respectfully submitted,

14   
15 Michael K. Perkins  
16 FINE, BOGGS & PERKINS LLP  
17  
18  
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## **EXHIBIT A**

# PROPOSAL TRANSMITTAL

Date: March 8, 2002  
To: Kevin Kilcoyne  
Barrow Group, LLC  
Fax: (770) 338-5440  
Re: Combined Management  
Program effective March 15, 2002

**Applied  
Underwriters**

HOME OFFICE  
PO Box 281900  
San Francisco, CA 94128-1900

Applied Underwriters Corp  
Applied Group Insurance Holdings  
Commercial General Indemnity  
Applied Underwriters Indemnity RAC  
American Employers Group  
Applied Risk Services

## QUOTATION # 805319 Issued by Applied Risk Services

### Terms:

- Quote includes 7.5% commission on standard premium
- Premium and fees will be billed on a direct bill basis.
- No authority is granted to issue certificates or binders.

### Instructions to Implement Program

1. The attached proposal must be presented in its original form and in its entirety.
2. The attached acceptance letter must be signed and returned.
3. Remit any deposits listed in the proposal to Coverage Dynamics Group.
4. If coverage is bound subject to stipulations listed on this proposal, that coverage will expire 30 days after the effective date of the program if those stipulations are not satisfied.

**Inquiries regarding this proposal should be directed to Carl DeBarbrie at 415-656-5000.**

**This proposal supercedes and voids any proposals previously issued.  
This proposal expires on the requested coverage effective date.**

**This quotation does not authorize service or bind any type of insurance coverage. Marketing representatives, agents, and brokers do not have the authority to bind coverage or enter into contracts on behalf of the company or its affiliates. Initiation of coverage is subject to final review and formal acceptance by Applied Risk Services ("Company"). Coverage will be bound only after: a proposal is issued by the Company, the acceptance letter attached to the proposal is signed and returned to the Company, the proposal is granted final approval by the Company's underwriters, and the Company issues written notice that coverage is bound.**



## **Insurance Facility Proposal**

### **Workers' Compensation Insurance**

QUOTATION # 805319 Issued by Applied Risk Services

#### Named insureds

Combined Management, Inc. and all clients listed in the application submitted except those specifically excluded below.

#### Program Effective Dates

March 15, 2002 to March 15, 2003

#### Coverage Form

Workers' Compensation Insurance

Coverage A: Statutory

Coverage B:	Bodily Injury by Accident	\$1,000,000 Each Accident
	Bodily Injury by Disease	\$1,000,000 Policy Limit
	Bodily Injury by Disease	\$1,000,000 Each Employee

#### Coverage Extensions and Exclusions:

- All/Other States Coverage, except Monopolistic states
- Stop Gap Coverage as required
- Notice of Cancellation-30 days, 10 days for non-payment of premium (or as per state regulation)
- Statutory Mandatory Endorsements

#### Issuing Carrier

Combined Specialty Insurance Company (formerly Virginia Surety Company)

NAIC Company Code: 40827

1999 Surplus: \$318,749,000.

1999 A.M. Best rating A+





#### Program Exclusions

##### *Combined Management, Inc.:*

Any operations not customarily considered office clerical or sales.

##### *Clients of Combined Management, Inc.:*

- USL&H
- Jones Act
- FELA
- Defense Base Act Coverage except where incidental.
- Operations involved in asbestos or fiberglass abatement.
- Operations involved in aviation.
- Operations involved in mining.
- Sub-aqueous operations.
- Operations involved in gas, oil, or geothermal drilling.
- Employee leasing companies.
- Temporary help companies.
- Coordinated policies with a self-insured-retention layer of more than \$10,000.

#### Policy Issuance

Master and multiple coordinated policies will be issued in accordance with rules and regulations filed with state compensation rating bureaus and/or the NCCL.

All policies will be issued on a guaranteed cost or non-participating plan basis except as otherwise agreed.

#### Program Structure

Risk (listed below) will be held in the Applied Underwriters Indemnity RAC captive facility.

If applicable, collateral and loss funds will be held in a trust account designated by us. Collateral required in the form of cash or letters of credit written with our standard form from a bank acceptable to us.

No new exposures may be added without our express authorization.

Electronic submission of payroll audit information is due monthly in a format to be specified by us.

#### Other Terms

No authority is granted to issue certificates or binders.



### Risk Program and Administrative Fees

Standard Premium is calculated using issuing company base rates multiplied by a factor of 1.19. Estimated annual Standard Premium is \$889,706 on estimated annual payroll of \$18,072,151.

This program has a profit and risk-sharing component. The minimum final premium amount will be .75 of Standard Premium. The maximum final premium amount will be 1.25 of Standard Premium.

Profit sharing, if any, will be payable 18 months from inception, and adjusted annually thereafter until all claims have been paid and closed, and is calculated as follows:

- Converted losses and expenses less than .75 of Standard Premium (\$667,280 based upon the estimated annual Standard Premium above) will result in the minimum premium.
- Converted losses and expenses in a range between .75 of Standard Premium and 1.25 of Standard Premium (the range would be \$667,280 to \$1,112,133 based upon the estimated annual Standard Premium above) will result in a final premium equivalent to the sum of converted losses and expenses.
- Converted losses and expenses greater than 1.25 of Standard Premium (\$1,112,133 based upon the estimated annual Standard Premium above) will result in the maximum premium.
- Converted losses are computed by applying the loss limitation and loss conversion factors. A claims handling expense of 10.00% of incurred claims (loss conversion factor of 1.10) on the first \$200,000 of each claim including ALAE.

Earned Standard Premium will be adjusted at final audit based on the total payroll reported for all applicable class codes times the adjusted insurance company base rates. The profit and risk-sharing plan will use losses based on the aggregate incurred loss value prior to the calculation date, which will be 18 months from policy inception of March 15, 2002 and adjusted annually thereafter until all claims have been paid and closed. Any return or additional payments will be made at those times using the factors noted in the profit and risk-sharing plan.

Surcharges, assessments, expense constants, and other similar charges are in addition to the above premium. Every effort has been made to include all applicable current premium surcharges. However, if a particular jurisdiction adds, removes or changes one or more surcharges, or if we inadvertently either fail to include one or more surcharges or include an incorrect surcharge, then any necessary changes will be brought to your attention as soon as possible. Since all such surcharges and assessments are regulated by the respective jurisdictions, we will follow those rules and bill you for full payment up-front of any surcharges or assessments.



Collateral and Loss Fund

Collateral and loss fund to be paid in cash or letters of credit written with our standard form from a bank acceptable to us.

Collateral is required to secure the maximum premium amount due in the program. Collateral is based on the estimated annual payroll of \$18,072,151 and will be evaluated throughout the program to keep the maximum premium fully funded.

Billing

Estimated annual pay-in premium: \$1,112,133

Deposit due at inception: \$ 88,971

Monthly payments are due and payable on or before the 15<sup>th</sup> day of the succeeding month. The first monthly payment is due on or before April 15, 2002 and each succeeding month thereafter. Monthly payroll audit reports are required by the 7<sup>th</sup> of each month for the preceding month. Monthly payments will be adjusted monthly to the actual earned payroll and exposure.

Collateral due at inception: \$100,000 with the balance due in two fixed installments of \$61,214 each due May 1, 2002 and June 1, 2002.

Stipulations

Post inception and periodic coverage and premium audits on premises.

Execution of the following agreements no later than 30 days after the effective date of the program: Rent-a-Captive Membership Contract, Retrocession Agreement, Program Administration Agreement, Indemnity Agreement, and Collateral Agreement.

Quotation is subject to final underwriting approval for: Alternative Warehouse, ALR, Inc., C&J Trucking

This proposal supercedes and voids any proposals previously issued.  
This proposal expires on the requested coverage effective date.

This quotation does not authorize service or bind any type of insurance coverage. Marketing representatives, agents, and brokers do not have the authority to bind coverage or enter into contracts on behalf of the company or its affiliates. Initiation of coverage is subject to final review and formal acceptance by Applied Risk Services ("Company"). Coverage will be bound only after: a proposal is issued by the company, the acceptance letter attached to the proposal is signed and returned to the Company, the proposal is granted final approval by the Company's underwriters, and the Company issues written notice that coverage is bound.

## **EXHIBIT B**

**APPLIED**  
UNDERWRITERSCombined Management  
67 Minot Ave  
Auburn, ME 04210

Coverage Dynamics™

**Profit Sharing  
Statement**

Page 1 of 1

Customer Account No. 46-734112

Profit Calculation No. 2

Statement Date: 01/23/06

For the Period: 03/29/02 to 05/02/03

Questions? Changes? Comments?

Your account manager is:  
Larry Bilman

Call:

(866) 234-4414

Fax:

(402) 898-2583

Mail:

P.O. Box 3646  
Omaha, NE 68103-0646**Important  
Information****\*\*\*Full Payment is Due Upon Receipt of this Statement\*\*\***

Wire funds to:

Security National Bank, Omaha, NE, FBO Applied Risk Services, Acct # 10001891, ABA Routing # 104000841.

This statement is a summary only. This statement reflects the combined activity under the statutory policy(s),  
and participation agreements in force under this program.**Premium  
and  
Losses**

Total Program Containment Premium - Audited	914,638.08
Inurred Losses as of: 12/31/05	690,540.60
Adjustment for Per Loss Limitation	-87,327.68
Program Losses	778,058.29
Loss Development Factor	1.10
Expected Losses	855,875.12

**Program  
Maximum,  
Minimum  
and  
Expense  
Calculation**

Maximum Cost Factor	1.25
Maximum Cost	1,143,297.60
Minimum Cost Factor	0.75
Minimum Cost	625,978.56
Expense Cost Factor	0.55
Expense Cost	503,060.94
Expense Cost + Expected Losses	1,358,926.08
Total Program Base Cost	1,143,297.60

**Summary  
of  
Current  
Balance  
Due**

Program Base Cost as of Profit Share Calculation	1,143,297.60
Loss Conversion (Program Losses * 10.00%)	89,084.08
Additional Fees	0.00
Taxes and Assessments	1,288.80
<b>Total Cost</b>	<b>1,213,630.48</b>
Cash Paid In as of Profit Sharing Calculation	934,736.98
LOC on File as of Profit Sharing Calculation	0.00
<b>Total Paid In</b>	<b>934,736.98</b>

**TOTAL AMOUNT DUE NOW****278,893.48**

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for

**DATE: JAN-25-2008**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order without an appearance at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges



# **Alternative Dispute Resolution (ADR) Information Package**

## **Alternatives to Trial**

**Here are some other ways to  
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package  
on each defendant along with the complaint. (CRC 201.9(c))**

**Superior Court of California  
County of San Francisco**

## **Introduction**

**Did you know that most civil lawsuits settle without a trial?**

**And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?**

**These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.**

**In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.**

**ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.**

## **Advantages of ADR**

**ADR can have a number of advantages over a lawsuit.**

- ***ADR can be speedier.*** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ***ADR can save money.*** Court costs, attorneys fees, and expert fees can be saved.
- ***ADR can permit more participation.*** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- ***ADR can be flexible.*** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- ***ADR can be cooperative.*** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.

- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

## **Disadvantages of ADR**

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

## **ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court**

**"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."  
(Superior Court Local Rule 4)**

**This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.**

**The San Francisco Superior Court currently offers three ADR programs for civil matters; each program is described below:**

- 1) Judicial arbitration**
- 2) Mediation**
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.**

### **JUDICIAL ARBITRATION**

#### ***Description***

**In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.**

**Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties**

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

### ***Operation***

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

### ***Cost***

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

## **MEDIATION**

### ***Description***

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

### ***Operation***

San Francisco Superior Court Local Court Rule 4 provides three different voluntary mediation programs for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at [www.sfgov.org/courts](http://www.sfgov.org/courts). Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

### ***Private Mediation***

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.



### ***Mediation Services of the Bar Association of San Francisco***

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by the court pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$200 per party administration fee, parties select a specific mediator from the list of court approved mediation providers. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at [www.sfbar.org](http://www.sfbar.org), or you may call BASF at 415-782-8913

### ***Judicial Mediation***

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

## **Cost**

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

## **EARLY SETTLEMENT PROGRAM**

### ***Description***

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

### ***Operation***

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

If a matter is assigned to the ESP by the Court, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

#### **Cost**

All parties must submit a \$200 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 982-1600.

\*\*\*\*\*

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution Coordinator,  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

or visit the Superior Court Website at  
[http://sfgov.org/site/courts\\_page.asp?id=3672](http://sfgov.org/site/courts_page.asp?id=3672)

# SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN FRANCISCO

400 McAllister Street, San Francisco, CA 94102-4514

Case No. \_\_\_\_\_

Plaintiff

v.

Defendant

## STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Private Mediation<br><input type="checkbox"/> Binding arbitration<br><input type="checkbox"/> Non-binding judicial arbitration<br><input type="checkbox"/> BASF Early Settlement Program<br><input type="checkbox"/> Other ADR process (describe) _____ | <input type="checkbox"/> Mediation Services of BASF | <input type="checkbox"/> Judicial Mediation<br>Judge _____<br>Judge _____ |
|--|---|---|

Plaintiff(s) and Defendant(s) further agree as follows:

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff    ☐ Defendant    ☐ Cross-defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff    ☐ Defendant    ☐ Cross-defendant

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name of Party Stipulating

\_\_\_\_\_  
Name of Party or Attorney Executing Stipulation

\_\_\_\_\_  
Signature of Party or Attorney

☐ Plaintiff    ☐ Defendant    ☐ Cross-defendant

Dated: \_\_\_\_\_

☐ Additional signature(s) attached

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):      TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	
CASE NUMBER: _____	

**A CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept: \_\_\_\_\_ Div.: \_\_\_\_\_ Room: \_\_\_\_\_

Address of court (if different from the address above): \_\_\_\_\_

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
  - a. ☐ This statement is submitted by party (name):
  - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
  - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):

c. ☐ The case has gone to an ADR process (indicate status):



CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation  
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
 (4) ☐ Binding judicial arbitration  
 (5) ☐ Binding private arbitration  
 (6) ☐ Neutral case evaluation  
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

- (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

CM-110

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**17. Discovery**

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c. ☐ The following discovery issues are anticipated (*specify*):

**18. Economic Litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**19. Other Issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

**20. Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

**21. Case management orders**

Previous case management orders in this case are (*check one*): ☐ none ☐ attached as Attachment 21.

**22. Total number of pages attached (*if any*):** \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached



## Superior Court of California County of San Francisco

### Judicial Mediation Program

**Introducing a new court alternative dispute resolution  
program that provides judicial mediation of complex civil cases**

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David L. Ballati  
The Honorable Anne Bouliane  
The Honorable Ellen Chaitin  
The Honorable John J. Conway  
The Honorable Robert L. Dondero  
The Honorable Ernest H. Goldsmith  
The Honorable Curtis E. A. Karnow  
The Honorable Patrick J. Mahoney

The Honorable Tomar Mason  
The Honorable James J. McBride  
The Honorable Kevin M. McCarthy  
The Honorable John E. Munter  
The Honorable Ronald Evans Quidachay  
The Honorable A. James Robertson, II  
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will facilitate assignment of cases that qualify for the program.

**Note:** Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution  
400 McAllister Street, Room 103, San Francisco, CA 94102  
(415) 551-3876

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

**I.(a) PLAINTIFFS**

Applied Underwriters, Inc. and Applied Risk Services

**DEFENDANTS**

Combined Management, Inc.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)**

Nebraska

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Maine

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Michael K. Perkins; Fine Boggs &amp; Perkins, LLP; 2450 S. Cabrillo Hwy, Ste. 100; Half Moon Bay, CA 94019

**ATTORNEYS (IF KNOWN)**

Allan Steyer/Jessica Grannis; Steyer Lowenthal, et al.; One California Street, Ste 300; San Francisco, CA 94111

**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**☐ 1 U.S. Government Plaintiff☐ 3 Federal Question  
(U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input checked="" type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

☐ Original Proceeding☒ Removed from State Court☐ Remanded from Appellate Court☐ Reinstated or Reopened☐ Transferred from Another district (specify)☐ Multidistrict Litigation☐ Appeal to District Judge from Magistrate Judgment**V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
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**VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)**

28 USC Section 1331 (Federal Question Jurisdiction) - Plaintiff seeks recovery for damages caused by Defendant's negligence and breach of contract.

**VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO****VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".****IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

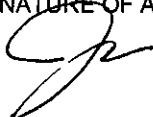
(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/4/2007



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44  
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.



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**DEFENDANTS**

Combined Management, Inc.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)**

Nebraska

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)**

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Maine

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

Michael K. Perkins; Fine Boggs &amp; Perkins, LLP; 2450 S. Cabrillo Hwy, Ste. 100; Half Moon Bay, CA 94019

**ATTORNEYS (IF KNOWN)**

Allan Steyer/Jessica Grammis; Steyer Lowenthal, et al.; One California Street, Ste 300; San Francisco, CA 94111

**II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)**☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☒ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

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**IV. ORIGIN**

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**VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)**

28 U.S.C. Section 1331 (Federal Question Jurisdiction) - Plaintiff, a natural person, has been injured by defendant, a corporation, and seeks damages for personal injury.

**VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$  CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: ☒ YES ☐ NO****VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".****IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

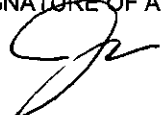
(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/4/2007



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I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.